

**Editor's note: Reconsideration denied by order dated Aug. 21, 1984**

W. W. ALLSTEAD

IBLA 81-513

Decided September 21, 1981

Appeal from decision of Oregon State Office, Bureau of Land Management, dismissing appellant's protest against recordation of mining claim located by rival claimant.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment--Mining Claims: Possessory Right--Mining Claims: Recordation--Mining Claims: Title

A notice of location which is in proper form and timely filed with the correct fee must be accepted and recorded by BLM notwithstanding the protest of a rival mining claimant that he has a superior and exclusive possessory right to the same ground. Such disputes are not within the jurisdiction of this Department, and can be resolved only by private litigation between the parties in courts of competent jurisdiction.

APPEARANCES: W. W. Allstead, appellant, pro se; M. C. Woodley, respondent, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

W. W. Allstead filed a protest with the Oregon State Office of the Bureau of Land Management (BLM) against BLM's acceptance for recordation of the notice of location and evidence of annual assessment work for the Elkhorn-Oregon mining claim filed by M. C. Woodley under BLM serial number OR MC 24203. Allstead is the locator of two claims known as the Lone Eagle and the Dubble Eagle, which are, according to an amended location notice filed by Woodley, overlapping part of the

Elkhorn-Oregon. Allstead asserts that Woodley's Elkhorn-Oregon claim is not valid at all, but that if it is, it is located elsewhere, and should not be recorded with a description which conflicts with portions of the Lone Eagle and Dubble Eagle claims. Moreover, Allstead asserts that Woodley acquired the Elkhorn-Oregon claim from one B. B. Barrows and has failed to file with BLM the instrument memorializing that conveyance. Accordingly, after an exchange of correspondence with BLM on this subject, Allstead filed with BLM a protest against its acceptance of Woodley's amended notice of location and evidence of assessment work for recordation. BLM contacted Woodley, who gave assurances that the amended location notice correctly described the land in the Elkhorn-Oregon claim, whereupon BLM, by its decision of March 25, 1981, dismissed Allstead's protest. From that decision Allstead has appealed.

In its decision BLM explained that Woodley's failure to file his instrument of conveyance from Barrows does not result in a presumption of abandonment of the claim under the law, and that matter of conflicting claims to the same ground by rival claimants can only be adjudicated by an appropriate state court in litigation between the parties, as BLM has no jurisdiction in such cases and "carefully remains neutral in these matters."

On appeal, Allstead renews the arguments presented to BLM, the gist of which is that the Elkhorn-Oregon claim boundaries have been redefined to include portion of his Lone Eagle and Dubble Eagle claims, and that Woodley is trespassing on his claims and appropriating his gold ore. He asks that this Board find and fix the boundaries of the Elkhorn-Oregon claim and determine whether it is valid or invalid.

A letter from M. L. Woodley states the following:

I was the plaintiff in Civil Court in a suit against W. W. Allstead of which suit was in my favor. It was appealed in Circuit Court by W. W. Allstead of which was in my favor. It was further appealed by W. W. Allstead to the Oregon Court of Appeals of which was found in my favor.

Mr. Allstead is still pursuing some avenue of recourse.

The record before us contains copies of the court's opinion and the decree in Woodley v. Allstead, L-4265 (Cir. Ct. Ore., Baker Cty.), dated July 2 and August 7, 1979, respectively. These conclude that Allstead has wrongfully withheld the property from Woodley and requires Allstead "to cancel said location notices," and awards Woodley a money judgment to be paid by Allstead. No record of any subsequent litigation is contained in the administrative file.

Apparently, no application for patent to the subject claims has been filed by either party, so that neither is compelled by statute to initiate litigation within a specific period, as would be the case if

a patent application had been published. See Revised Statutes 2326, as amended, 30 U.S.C. § 30 (1976); and 43 CFR Subpart 3871.

Nevertheless, we have held that under the statute, supra, the Department is without authority to determine the question of right of possession to claims as between rival claimants, and that a suit filed in a court of competent jurisdiction is the proper method of resolving such disputes. John R. Meadows, 43 IBLA 35 (1979). Therefore, BLM may not refuse to accept and record a notice of location in proper form, with the correct fee paid, merely because a rival claimant to the same ground protests the filing.

Although we have no information concerning the final resolution of the litigation between Allstead and Woodley, we have held that where a court determination has been made, the adverse claimant cannot assert his claim as an objection to the issuance of a mineral patent if the applicant is the successful litigant. Essex International, Inc., 15 IBLA 232, 242, 81 I.D. 187, 192 (1974), and cases therein cited. Thus, the Department is bound not to recognize the claim of the unsuccessful litigant in such actions.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing

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Administrative Judge

We concur:

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Bernard V. Parrette  
Chief Administrative Judge

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Gail M. Frazier  
Administrative Judge

